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COMMENTARY

DOJ Discrimination Suit Over Shoes Left Outside Holds Lessons for Community Associations

A Florida condominium association and its board of directors refused to grant an accommodation to allow an owner to leave his shoes outside the front door of his unit in a condominium building with outdoor walkways.

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By Michael L. Hyman and Nicole R. Kurtz

A Florida condominium association and its board of directors refused to grant an accommodation to allow an owner to leave his shoes outside the front door of his unit in a condominium building with outdoor walkways. As a result of its unyielding resolve, the association now faces a costly, and potentially dire, federal discrimination lawsuit brought against it by the U.S. Department of Justice. The DOJ's complaint alleges that the association, in refusing to allow the unit owner to leave his shoes outside of his unit's front door, committed various violations of the Fair Housing Act. Furthermore, the entire matter has also been chronicled online in an extensive news report by The Daily Beast.

The website's article begins by noting that Charlie Burge, the unit owner who sought an accommodation that would allow him to maintain his shoes outside his unit's front door, is a 9/11 responder who suffers from medical ailments stemming from his front-line work at the World Trade Center site. Before moving to Florida, he had worked for the New York City Department of Sanitation for 35 years, and he spent more than 400 days clearing debris at ground zero. As a result of this work, the article states that Burge suffers from upper respiratory issues, gastrointestinal ailments, skin cancer and PTSD; all of which federal officials have certified as being related to cleanup work performed at the WTC site.

After he retired in 2015, Burge and his wife Anna moved to a residence they owned at the Links South at Harbour Village, a condominium community on the Ponce Inlet south of Daytona Beach, Florida. In order to avoid aggravating his symptoms, and on the advice of his doctor, the couple began leaving their shoes outside of their front door. As their door is set back by several feet from the outdoor open-air walkway of their building, they were able to keep their shoes in a spot where they would not block anyone's path.

A couple of years passed without complaint, but in October 2017 the association's board of directors presented the Burges with a rule violation notice informing them that they had 10 days to remove the shoes from the hallway.

Police Retrieve Shoes

According to the DOJ's lawsuit, which was filed on Oct. 8, what then ensued constituted a clear pattern of FHA violations and housing discrimination. The DOJ's complaint asserts that, due to Burge's disability, the FHA required the board to have made a reasonable accommodation to the Burges by allowing them to keep their shoes outside their door so they could have had an equal opportunity to use and enjoy their home.

Instead, after a subsequent notice from the board in January 2018, the couple opened their front door and found their shoes missing, so they called the police. Officers then helped them to retrieve their shoes from the association's management office. The following month, this entire sequence of events repeated itself, and again the police helped the Burges retrieve their shoes from the office.

Subsequent communications from the association's attorney warned the Burges to cease and desist from leaving their shoes outside the door, and threatened an injunction. The town's chief of police also visited the couple to inform them that they could no longer have its officers come to the condominium to retrieve their shoes.

The couple ultimately retained an attorney who submitted a formal request for a reasonable accommodation to the association, asking it to allow the Burges to leave their shoes outside their unit for health reasons. The request included a recommendation from Burge's doctor not to track "outdoor allergens, chemicals or pollutants" into the unit because of his various health conditions, and a request from a physician's assistant to let the Burges leave their shoes outside the unit. The request also included an academic study on shoe-borne pathogens, as well as a letter from the WTC Health program that outlined the specifics of Burge's various maladies.

Association Incredulous

It only took two days for the association's attorney to respond to the accommodation request with a demand for further documentation together with an explanation as to why the accommodation was necessary.

The association also requested permission to inspect and photograph the couple's residence and "examine all shoes and vegetation within the unit and balcony." Through its attorney, the association asked for authenticated copies of Burge's medical and

prescription records for the past two years, copies of any test results for any allergens or molds within the unit in the past year, and any authoritative materials substantiating the correlation between an allergy documented by Burge and the need to store shoes outside.

A subsequent letter from Burge's physician stated that he "is allergic to mold, mites, dust, pollen, trees, and grasses, all of which may exacerbate his conditions," and "these upper respiratory conditions cause difficulty primarily with breathing and swallowing, but can also affect speaking, eating, and hearing." Bringing the shoes inside put Burge "at unnecessary risk of inflammation, difficulty breathing or swallowing, a possible complete inability to breathe or swallow," the physician wrote, also noting that leaving the shoes outside gave any pollutants or allergens a chance to dissipate outdoors in the open air.

After more than a year of back-and-forth communications by the attorneys, the association concluded that the "doctor's letter does not connect the dots by stating specifically the nexus of such allergies to the specific substance presumably on his shoes." The DOJ complaint states that the association's legal counsel also asked if Burge had retained a doctor or lab to test his shoes, if Burge's doctor advised him how to deal with shoes inside his vehicle, and "if Mr. and Mrs. Burge had any peer-reviewed medical articles that substantiated the correlation between Mr. Burge's allergies and leaving his shoes outside."

Discriminatory Acts

The Daily Beast article states that a source, who asked for anonymity, told the reporter that the association's board members began to lash out in response to the accommodation request. Unfounded rumors about Mr. Burge and his wife began to circulate throughout the community, and the board made statements during its meetings about the costs of Mr. Burge's legal maneuvers.

Additionally, when Mr. Burge began washing his shoes before going inside using a spigot located in the garage, management removed the spigot handle.

The website's article also states that the association was not holding other residents to the same standard. A building source says one resident would leave bags of dog feces outside of his door, and Mr. Burge also noted that the president of the association regularly parked a double stroller for his family outside of his unit.

The Burges' attorney filed a complaint in April 2019 with the U.S. Department of Housing and Urban Development, the federal agency then headed by Trump appointee Ben Carson, and HUD determined the condo association had indeed discriminated against Burge. This cleared the way for the DOJ to file its lawsuit, *United States of America v. The Links South at Harbour Village Condominium Association*, in the U.S. District Court for the Middle District of Florida.

Based on the information from The Daily Beast's exhaustive report and the allegations from the DOJ's complaint, it seems there is a strong case to be made against the association for its refusal to grant Burge's requested accommodation. Perhaps the dispute became personal for members of the board of directors, who obstinately refused to reconsider their prior decision even in light of seemingly verifiable and official medical documentation confirming a legitimate need for the accommodation.

As a result, the legal costs and potential liabilities for the Links South at Harbour Village will be substantial, but the takeaways from this case present priceless lessons for all other community associations that come completely free of charge. Associations and their boards of directors must act in a reasonable manner when making determinations over requests for accommodations based on physicians' recommendations. Steadfastly refusing to accept valid documentation presented by unit owners could lead to extremely severe legal and financial consequences, not to mention news coverage that remains online in perpetuity and could negatively impact property values.

Visit <https://bit.ly/3pg8SEY> to read The Daily Beast article, which is perfect example of such a report.

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<https://www.law.com/dailybusinessreview/2021/10/29/doj-discrimination-suit-over-shoes-left-outside-holds-lessons-for-community-associations/>

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